59. (Currently Amended) The apparatus ~~method~~ of claim 56 wherein the dynamic flow tissue digestion chamber is operated between 5.0 rotations per minute (5.0 rpm) and 500.0 rotations per minute (500.0 rpm).

60. (Currently Amended) The apparatus ~~method~~ of claim 56 wherein the sonic transducers discontinuously transmit discrete pulsed frequencies between 2.0 kilohertz (2.0 khz) and 200.0 kilohertz (200.0 khz).

REMARKS

This is a full and timely response to the outstanding non-final Office action mailed on October 2, 2003. The Examiner has required the applicant to elect to prosecute one of 3 groups of claims identified in the Office Action. In response to the restriction requirement, applicant respectfully elects to prosecute the claims of Group 1, corresponding to claims 1-46, ***with traverse***, as set out hereafter.

In the interests of equity and fairness, applicant should be entitled to pursue different types of claims in the present application, particularly, apparatus claims and method claims, for the invention to fully protect the invention, because there is a different body of law pertaining to each of these different types of claims. The restriction requirement is therefore unfair to the applicant, because it will require the applicant to file and bear the additional cost and time delay associated

with filing one or more divisional or continuing applications in order to cover each type of claim set.

As provided in 35 U.S.C. § 121, restriction to one of two or more claimed inventions is proper only if the inventions are "independent and distinct." In its discussion of the propriety of restrictions, MPEP § 803 further provides that if search and examination of two or more inventions can be made without "serious burden," the Examiner must examine them on the merits even if the claims are directed to distinct or independent inventions.

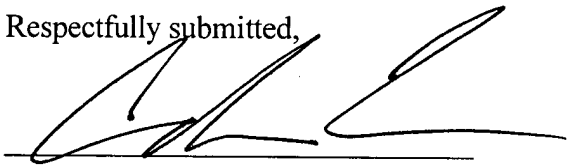
In the present case, Groups 1, 2, and 3, although not necessarily obvious in view of each other, are similar in subject matter. More specifically, each pertains to isolating islets from a pancreas. For this reason, applicant respectfully submits that the inventions described in these claims are not "independent" as defined in MPEP § 803 and that the restriction requirement therefore is improper as between Groups 1, 2, and 3. Indeed, it appears that a search for apparatus and method would be conducted within the *same class*. In such a situation, it clearly would not be overly burdensome on the Examiner to check for both of these "separate" inventions at the same time.

Moreover, claims 1 and 47-60 have been amended so that the similarities of the claim sets are more clearly set forth. Simply put, claims 1-46 claim a method for isolating isolets, and claims 47-60 claim an apparatus for islet isolation. Indeed, the originally filed application provides that an automated control device may incorporate methods for islet separation. *See* Originally Filed Application, ¶¶ 15-16. It should be noted, although, that the methods of claims 1-46 are not limited to being performed using an apparatus as described in claims 47-60. There are many other

apparatuses that may be used in such a method. Also, it should be noted that the amendments are for clarification only and add no new matter to the claims.

For at least the foregoing reasons, applicant respectfully traverses the restriction requirement and respectfully requests the Examiner to examine the claims of Groups 1, 2, and 3 together. Applicant expressly reserves the right to present the non-elected claims, or variants thereof, in continuing applications to be filed subsequent to the present application. Should the Examiner have any questions regarding this response, the Examiner is invited to telephone the undersigned attorney.

Respectfully submitted,



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